

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION**

LIDIA G. BISTRINKA,

Plaintiff,

v.

**OREGON EMPLOYMENT
DEPARTMENT,**

Defendant(s).

Case No. 3:13-cv-00061-PK

**ORDER ADOPTING FINDINGS AND
RECOMMENDATION**

Michael H. Simon, District Judge.

United States Magistrate Judge Paul Papak issued Findings and Recommendation in this case on May 28, 2013. Dkt. 25. Judge Papak recommended that Defendant's motion to dismiss (Dkt. 20) be granted and this case dismissed for lack of subject-matter jurisdiction based on sovereign immunity.

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court

shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

Plaintiff timely filed objections to Judge Papak’s finding of sovereign immunity. Dkt. 28. The Court has reviewed *de novo* those portions of Judge Papak’s Findings and Recommendation to which Plaintiff has objected, as well as Plaintiff’s objections, Defendant’s response, and the briefs filed relating to the motion to dismiss. Plaintiff objects that sovereign immunity “is the worst thing that ever happened to this broken democracy” and then proceeds to describe the facts of her case. Plf’s Obj. at 2-3. Plaintiff offers no substantive objection supported by legal authority. The Court agrees with Judge Papak’s reasoning and conclusion that this Court lacks subject-matter jurisdiction based on sovereign immunity and ADOPTS this portion of the Findings and Recommendation.

For those portions of a magistrate’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report[.]”); *United States. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (*en banc*) (the court must review *de novo* magistrate’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Magistrates Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate’s recommendations for “clear error on the face of the record.”

For those portions of Judge Papak's Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent and the Court ADOPTS those portions of the Findings and Recommendation.

CONCLUSION

The Court ADOPTS Judge Papak's Findings and Recommendation, Dkt. 25. Defendant's motion to dismiss, Dkt. 20, is GRANTED and this case is DISMISSED for lack of subject-matter jurisdiction. The Court further finds that any appeal from this Order would be not be taken in good faith and Plaintiff's *in forma pauperis* status should be revoked pursuant to 28 U.S.C. § 1915(a)(3).

IT IS SO ORDERED.

DATED this 17th day of June, 2013.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge